

BOARD OF SELECTMEN – SPECIAL MEETING – OCTOBER 3, 2006

I. Call to Order/Roll Call

Chairman Alex J. Vispoli called the Special Meeting of the Board of Selectmen to order at 6:00 P.M. in the Selectmen's conference room at the Town Offices. Present at the meeting were: Chairman Vispoli and Selectmen Mary K. Lyman, Brian P. Major and John P. Hess. Also present were Town Manager Reginald S. Stapczynski and Town Counsel Thomas J. Urbelis. The meeting was duly posted.

II. Opening Ceremonies

Chairman Vispoli called for a Moment of Silence followed by the Pledge of Allegiance.

III. Discussion of St. Augustine School's Crossing Guard Issue

Chairman Vispoli opened the meeting and said it had been called to take action on the following proposed language that was drafted at the Work Session held on Wednesday, September 27, 2006 with representatives from the School Committee regarding the funding of the St. Augustine School's crossing guards:

"If the School Committee agrees to provide crossing guards at St. Augustine's School at two locations (School Street and Central Street) through the school year 2006-07 and a deficit occurs in the Crossing Guard Account (#330) at the end of said school year, then the Board of Selectmen and the Finance Committee agree to support a Reserve Fund transfer requested by the School Committee to cover the deficit caused the two St. Augustine School's crossing guards."

Chairman Vispoli informed the Board it was decided at the September 27, 2006 Work Session that the three Boards (Selectmen, School Committee and Finance Committee) would subsequently meet to vote on the language. He noted that the School Committee would be taking a vote at their meeting on Tuesday, October 10th, however, he was not sure when the Finance Committee would be voting. Town Manager Stapczynski said the Finance Committee had not planned a meeting prior to their scheduled October 18th meeting and noted the language cannot be implemented without their taking a vote. He informed the Board that Chair Joanne Marden wanted an opportunity to address the Boards concerning the issue and would be invited to attend the Selectmen's October 10th meeting.

Selectman Major suggested that all three Boards meet for a half hour prior to the October 10th meeting. This was agreeable to the other Board members.

Selectman Hess noted that before a vote is taken by the Selectmen the wording in the proposed language should be clarified with the reference to "the Finance Committee" removed from the Selectmen's vote. He indicated he was not ready to vote on the language that evening as he felt more information was needed from Town Counsel. He said his legal opinion regarding the issue did not cite specific case law – the Town Manager indicated there was no case law to cite.

III. Discussion of St. Augustine School's Crossing Guard Issue (Cont.)

Chairman Vispoli said the issue at the present time is to cover the short-term problem for this school year and then to address the overall legal issue and the difference of opinion offered by Town Counsel Urbelis and the School's Counsel Naomi R. Stonberg in the coming

months. Selectman Major said he felt it was important to address the short-term issue of safety and protecting the Budget. He also reminded the Board that there is only one Town Counsel.

Selectman Lyman said she was reluctant to vote on the wording that evening and discussed the ramifications of taking a vote without the benefit of hearing the comments of School Committee and Finance Committee members.

A question was asked whether the Finance Director had reviewed the wording and if he thought the action could be implemented. The Town Manager responded that Mr. Torrisi had reviewed the language. He said if there was a transfer it would have to originate from the School Department and didn't recall a Reserve Fund transfer ever being requested from them. The Town Manager went on to explain that there are three ways to handle the matter: 1) Town Meeting – adjustments to this year's Budget would require a Town Meeting vote; 2) legislation that permits the Selectmen and Finance Committee to approve department transfers at the end of the fiscal year; and 3) the language being discussed that evening. The Board engaged in a discussion and Chairman Vispoli noted that only the mentioned language – not the other two options – had been discussed at the September 27th Work Session.

The Board then engaged in a discussion regarding Town Counsel's opinion that the Town must provide the same transportation services to private school students which are provided to public school students, how that relates to other private schools in Town and whether they may request crossing guards in the future as a result of this discussion. Town Manager Stapczynski said he felt it was safe to say the campus settings of the other private schools differ from the sidewalk traffic issue present at St. Augustine's School.

Police Chief Brian J. Pattullo addressed the Board and reminded them there is only one mechanism in place to pay for crossing guards and that is in the School Department's Budget. He said funds for the St. Augustine School's crossing guards were taken out of their Budget based on a legal opinion they had at the time. Selectman Lyman agreed, however, said she was concerned about how the overrun in their Budget will be addressed should the crossing guards be reinstituted.

Selectman Major said he felt it was important for the Board to vote on the proposed language that evening to send a strong message that they support this as a the public safety issue but not a resolution of the long-term legal issue. Chairman Vispoli concurred, however, Selectman Lyman and Selectman Hess said they were not prepared to vote that evening.

Andover resident Jon Stumpf, a member of the St. Augustine School's Finance Committee, was in the audience and when asked by Selectmen Hess whether the School was in a position to pay for the crossing guards he responded they were not.

III. Discussion of St. Augustine School's Crossing Guard Issue (Cont.)

Town Counsel Thomas J. Urbelis then addressed the Board and reviewed the differences between his legal opinion and that of the School's Attorney Naomi Stonberg. He said it was important to note that Massachusetts General Laws, Chapter 76, Section 1 clearly stipulates that pupils who attend approved private schools of elementary and high school grades shall be entitled to the same rights and privileges as to transportation to and from school as those provided by law for pupils of public schools. He said this is the basic disagreement he has with Attorney Stonberg's opinion. He said it was his view that State law requires the School Department must provide the same type of transportation to the St. Augustine School students that it provides to the Andover Public School students which might include both transportation

and crossing guards if that is provided to similarly situated public school students. He said the law was enacted to promote safety. The questions of the Town's liability and a lawsuit between the Town and the School Committee were also discussed.

Selectman Major said he felt a request should be made to the School Department as to the criteria they use for the assignment/placement of the present crossing guards. Andover resident Donna Garesche, 23 Glenwood Road, addressed the Board and agreed it was an important element that should be received in writing before any changes are made. She said the safety of the school children using these crosswalks should be the most important issue. Chairman Vispoli concurred and said it was important to relay that this is a safety and not a money issue.

Andover resident Mary Carbone, Cyr Circle, addressed the Board and said the issue needs to be straightened out in perpetuity as the transportation of children from one sidewalk to another is very important.

The Board then engaged in a discussion as to what would happen should all three of the Boards (Selectmen, School Committee and Finance Committee) not agree on the proposed language and how the Selectmen would fulfill their obligation for safety. It was noted that the School Committee's affirmative vote is the most important and the Selectmen's responsibility was taken away when crossing guards were put in the School Department's Budget.

IV. Adjournment

A motion was made by Selectman Major, seconded by Selectman Hess, to adjourn the meeting. The motion passed 4 – 0. The meeting adjourned at 6:55 P.M.

Respectfully submitted,

Sandra A. Cassano

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Recording Secretary